

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES THOMAS Jr.,

Petitioner,

v.

HAROLD W. CLARKE,

Respondent.

Case No. C06-5563 FDB

ORDER DENYING CERTIFICATE  
OF APPEALABILITY

This matter comes before the Court on Motion for Certificate of Appealability.

A court will issue a certificate only when a petitioner has made “a substantial showing of the denial of a constitutional right .” 28 U.S.C. § 2253(c)(2). To satisfy this standard the petitioner must show that reasonable jurists would find the court's decision on the merits to be debatable or are adequate to deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 473, 484 (2000). Plaintiff has failed to make the requisite showing.

Petitioner challenges a 2001 Pierce County conviction and raises Sixth Amendment claims in light of the United States Supreme Court ruling in Crawford v. Washington, 541 U.S. 36 (2004). The Ninth Circuit has held the Crawford decision regarding the Sixth Amendment right to confrontation applies retroactively to cases on collateral review. See, Bockting v. Bayer, 399 F.3d

1 1010 (9<sup>th</sup> Cir. 2005); *amended* 408 F.3d 1127; *cert. granted sub. nom.* Whorton v. Bockting, \_\_  
2 U.S. \_\_ 126 S.Ct. 2017(2006).


3 The Antiterrorism and Effective Death Penalty Act (AEDPA) provides a one-year limitations  
4 period for habeas applications. 28 U.S.C. § 2244(d)(1). Under subsection (c) the year commences to  
5 run from “the date on which the constitutional right asserted was ... newly recognized by the  
6 Supreme Court and made retroactively applicable to cases on collateral review.” § 2244(d)(1)(c).  
7 Crawford was decided on March 8, 2004. On February 22, 2005, the Ninth Circuit held Crawford  
8 retroactive to collateral review. Applying § 2244(d)(1)(c), the one-year statute of limitations  
9 commenced to run the date Crawford was decided, making the petition untimely. See, Dodd v.  
10 United States, 545 U.S. 353 (2005).

11  
12 ACCORDINGLY,

13 IT IS ORDERED:

14 The Motion for Certificate of Appealability [Dkt # 18] is **DENIED**.

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16 DATED this 29<sup>th</sup> day of January, 2007.

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21 FRANKLIN D. BURGESS  
22 UNITED STATES DISTRICT JUDGE  
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